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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DOMENICO D'CARPIO, Individually | Case No. 2:19-cv-00174-JLS-RAO
and On Behalf of all Others Similarly
Situated,

Plaintiffs.

V.

SELDAT, INC.,

Defendants.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE
TO AMEND**

Date: July 5, 2019

Time: 10:30 a.m.

Crtm. 10A – 10th Floor

Judge: Hon. Josephine L. Staton

1 **I. INTRODUCTION**

2 Plaintiff brings this motion for leave to file their First Amended Complaint
3 against Defendant to add an additional defendant: Seldat Distribution, Inc. The
4 proposed FAC is attached to the Declaration of Kevin F. Ruf, filed concurrently
5 herewith. Even though plaintiff – who worked as a purported “contract” security
6 guard at a facility leased by Seldat, Inc. (Seldat) -- received his compensation in
7 the form of checks from “SELDAT – 3PL” – with an address in Burlington, New
8 Jersey that appears to be the headquarters of defendant Seldat, Seldat in its
9 discovery responses of May 28, 2019 contends that Seldat Distribution, Inc. was
10 the hirer of Plaintiff and the putative class. While plaintiff does not believe he has
11 sufficient basis to dismiss Seldat, Inc., he believes he has sufficient basis to add
12 Seldat Distribution, Inc. as a defendant now.
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14 **II. DEFENDANT DOES NOT OPPOSE TO THIS AMENDMENT**

15 Plaintiff’s counsel has met and conferred with Defendant’s counsel, Eric
16 Witt, who has indicated Defendant does not oppose this amendment.
17

18 **III. PROCEDURAL HISTORY**

19 This case is still in its initial stages. The Complaint was filed on January 8,
20 2019. The Complaint contains causes of action under both California and federal
21 law relating to misclassification of security guards as independent contractors.
22

23 Although defendant Seldat, Inc. appears to “lease” the premises on which
24 Plaintiff worked as a security guard in Compton, California, in its interrogatory
25

1 responses of May 28, 2019, Seldat, Inc. insists that “Seldat Distribution, Inc.” was
2 the actual hirer of Plaintiff and the putative class. Thus, Plaintiff seeks to amend
3 the complaint to add Seldat Distribution, Inc. as a defendant. But because
4 Plaintiff’s checks came from “Seldat” at what appears to be the address of
5 Seldat, Inc. (the original Defendant), Plaintiff does not believe it would be
6 appropriate to dismiss Seldat at this time.
7
8

9 **IV. COMPLIANCE WITH THIS COURT’S STANDING ORDER AND**
10 **LOCAL RULE 15-1**

11 Pursuant to Local Rule 15-1, the proposed First Amended Complaint is
12 attached hereto as Exhibit A. Pursuant to this Court’s Standing Order, a “redlined”
13 version of the proposed First Amended Complaint (FAC) is attached as Exhibit B.
14

15 Furthermore, this Court requires that this motion: 1) state the effect of the
16 amendment and 2) identify the page and lines number(s) and wording of the
17 proposed changes. The effect of the amendment is to add as a defendant Seldat
18 Distribution, Inc., which appears to be closely related to the current defendant
19 Seldat, Inc. (which will remain a defendant). Some typographical errors in the
20 original complaint are also corrected in the FAC. The page and line numbers in
21 which the additional defendant is referenced are too numerous to set forth here but
22 are shown in the “redline” version attached as Exhibit B.
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1 **V. ARGUMENT**

2 **A. Public Policy Favors Granting Leave to Amend Pleadings**

3 Under Federal Rule of Civil Procedure 15(a), when a party seeks to amend a
4 pleading, “leave shall be freely given when justice so requires.” Leave to amend is
5 freely given unless the opposing party makes a showing of undue prejudice, bad
6 faith or dilatory motive. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (“If the
7 underlying facts or circumstances relied upon by a plaintiff may be a proper
8 subject for relief, he ought to be afforded an opportunity to test his claim on the
9 merits”).

10 The policy regarding amended complaints is to be applied with “extreme
11 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.
12 2003). Unless the opposing party can show that the amendment would cause
13 prejudice to the opposing party, is sought in bad faith, is futile, or creates undue
14 delay, the request for amendment should be granted. *See Ascon Properties, Inc. v.*
15 *Mobile Oil Co.*, 866 F.2d 1148, 1160 (9th Cir. 1989); *Martinez v. Newport Beach*,
16 125 F.3d 777, 785 (9th Cir. 1997); *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,
17 186 (9th Cir. 1987). The burden of proof to deny the amendment falls on the party
18 opposing the amendment. *See DCD Programs*, 833 F.3d at 187. Moreover, the
19 request for leave to amend is viewed in light of the fact that the Federal Rules “are
20 to be construed to secure the just, speedy, and inexpensive determination of every
21 action.” *Foman*, 371 U.S. at 182.

1 The courts commonly consider the following four factors in deciding
2 whether to grant a motion for leave to amend a complaint: (1) bad faith or dilatory
3 motive on the part of the movant; (2) undue delay in filing the motion; (3)
4 prejudice to the opposing party; and (4) the futility of the proposed amendment.
5

6 *See Roth v. Marquez*, 942 F.2d 617, 628 (9th Cir. 1991) (quoting *DCD Programs*
7 *v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)).
8

9 Absent prejudice or any of the other above factors “there exists a
10 presumption under Rule 15(a) in favor of granting leave to amend.” *Eminence*
11 *Capital*, 316 F.3d at 1052. Moreover, to justify denial of leave to amend, the
12 prejudice must be substantial. *Morongo Band of Mission Indians v. Rose*, 893 F.2d
13 1074, 1079 (9th Cir. 1990).
14

15 The amendment is not being made in bad faith; verified new facts recently
16 learned via discovery provide a good faith basis for Plaintiff to amend his
17 complaint to add Seldat Distribution, Inc.
18

19 **VI. CONCLUSION**
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21 Based upon the foregoing, Plaintiffs’ motion for leave to file their First
22 Amended Complaint should be granted.
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1 Dated: June 4, 2019
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10 Attorneys for Plaintiff
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1 **PROOF OF SERVICE BY ELECTRONIC POSTING**

2 I, the undersigned say:

3 I am not a party to the above case, and am over eighteen years old. On June 4,
4 2019, I served true and correct copies of the foregoing document, by posting the
5 document electronically to the ECF website of the United States District Court for the
6 Central District of California, for receipt electronically by the parties listed on the
7 Court's Service List.

8 I affirm under penalty of perjury under the laws of the United States of America
9 that the foregoing is true and correct. Executed on June 4, 2019, at Los Angeles,
10 California.

11
12 *s/ Kevin F. Ruf*

13 Kevin F. Ruf

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